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Via Hand Delivery

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
The Portals, TW-A325
445 Twelfth Street, S. W.
Washington, D.C. 20554

Re: Written Ex Parte Presentation in CC Docket No. 99-68, Inter-Carrier Compensation for ISP-Bound Traffic, and CC Docket No. 96-98, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996

Dear Ms. Salas:

Please accept this letter as a written ex part presentation in the proceedings listed above. An original and three copies of this letter are supplied, and one additional copy is supplied to be stamped "received" and returned to the messenger.

I am a Montana telecommunications attorney and file this letter on behalf of my client, Ronan Telephone Company ("Ronan"). Ronan is a small incumbent exchange carrier serving a rugged and sparsely populated portion of rural Montana that is very costly to serve. Ronan asks that the Commission keep the following points in mind when it rules in this docket:

- The Commission is currently deciding whether calls to ISPs should be eligible for reciprocal compensation payments. In so doing, the Commission is, addressing questions raised by the D.C. Circuit in its remand order.1

- The Commission should not expand the proceeding to address reciprocal compensation issues (including whether and when bill-and-keep may be imposed by state commissions) for traffic other than ISP-bound traffic. So expanding the proceeding beyond the issues listed in the June 23, 2000 Public Notice would be unfair and would violate the notice provisions in the Administrative Procedures Act.

1 Public Notice "Comments Sought on Remand of the Commission's Reciprocal Compensation Declaratory Ruling by the U.S. Court of Appeals for the D.C. Circuit" FCC 00-227 (June 23, 2000).

- If the Commission does decide to address reciprocal compensation issues for traffic other than ISP-bound traffic, it should

1. Refrain from relaxing the requirement of 47 CFR Sec. 51.713 that traffic be roughly balanced before bill-and-keep may be imposed. If traffic is not roughly balanced, imposing a bill-and-keep term would require the party who is terminating more traffic to provide telecommunications service for free. Specifically, to the extent that the amount of traffic terminated by Party A exceeds the amount of traffic terminated by Party B, Party A gets no compensation (in-kind or otherwise) for terminating calls from Party B, under a bill-and-keep rule. Such forced provision of service for no compensation constitutes an unlawful governmental taking of the property of Party A.

2. Confirm an equally important point – that for bill-and-keep to be appropriate, the parties to the interconnection arrangement must incur equivalent costs in transporting and terminating calls from the other party. If Party A terminates traffic over a large and costly-to-serve rural area, incurring costs of approximately 10 cents a minute to do so, and Party B terminates traffic to a handful of low-cost business customers in the community's townsite, incurring costs of approximately 1/10th of a cent per minute to do so, bill-and-keep is unfair even if the traffic is roughly balanced.

3. Recognize that it may be necessary to require that wireless and CLEC carriers provide cost-studies in rural areas for purposes of determining non-symmetrical reciprocal compensation rates and for purposes of determining whether the parties' costs are not the same.

It would be unreasonable to ignore the costs of the CLEC/Wireless entrant in rural areas. Costs vary so greatly in rural areas that there is no justification for presuming the costs the CLEC/wireless carrier incurs to serve a few large business customers (which are usually the largest in the town and the least costly to serve) equal the costs the rural ILEC incurs to serve an entire rural service area. Most CLEC/Wireless carriers in rural areas providing competitive wireless or CLEC wireline services are neighboring ILECs implementing a cross-border entry strategy. As ILECs, these companies are experienced in and fully capable of providing the cost data required to ensure that costs are roughly balanced. Moreover, some of these ILECs, particularly the invading ILEC in the evolving rural competition in Ronan, Montana, receive more universal service support than the ILEC whose territory they are entering (in the case in Ronan, Montana, the invading ILEC receives vastly more support than the incumbent, over eight times as much per customer), making a review of cost data essential to ensure against unlawful cross-subsidization in violation of 47 U.S.C. Sec 254(k).2

The FCC's presumption at 47 CFR Sec. 51.711 that CLEC/Wireless costs equal the costs of the rural ILEC (a presumption the FCC's current rules say can be rebutted at the option of the CLEC/Wireless carrier but not at the option of the ILEC) is contrary to the Telecommunications Act of 1996, as well as the equal protection, due process and taking clauses of the Constitution.

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2 In fact, if the invading ILEC in Ronan, Montana did not receive Universal Service Support, it's approximate $2.5 Million annual profit would be approximately a $5 Million annual loss.

The rule is said to implement 47 U.S.C. Sec. 252(d)(2). However, that provision requires that arbitrators in interconnection agreement arbitration proceedings set reciprocal compensation rates so that each party recovers the "costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier."(emphasis added)3 The emphasis is on the costs of the facilities that do the transporting and terminating. If the two parties have different facilities with different costs, the different facilities must be considered separately in order to comply with the statute. In the evolving competition in Ronan, Montana, the incumbent serves all residents in a rural area of approximately 150 square miles and the invading ILEC serves only four large business customers within the community's central townsites. It is an outrageously erroneous assumption to presume that the costs incurred by each of these carriers are similar.

In any event, the arbitration provisions of 47 U.S.C. Sec. 252(d)(2), and FCC rules implementing them (such as the rule at 47 CFR Sec. 51.711 that purports to prevent state commissions from considering CLEC/Wireless carrier costs except at the CLEC/Wireless carrier's invitation) do not apply to rural telephone companies still subject to the rural exemption set forth at 47 U.S.C. Secs. 251(f)(1). The rural exemption makes inapplicable the local competition duties set forth in 47 U.S.C. Sec. 251(c), including the negotiation/arbitration process required by 47 U.S.C. Sec. 251(c)(1). Since the negotiation/arbitration process does not apply to such companies, the FCC's rules implementing that process (including 47 CFR Sec. 51.711) do not apply to such companies. Confirmation of this point would be appreciated.

Ronan thanks the Commission for the opportunity to present these points.

Sincerely yours,

Chuck Evilsizer /gtl

Ivan (Chuck) Evilsizer
Attorney for Ronan Telephone Company

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3 47 U.S.C. Sec. 252(d)(2)(A)(i).